

Commodity Credit Corporation, USDA

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policy or obtain NAP coverage, as applicable, for the next available 2 crop years.

(c) If any producer fails to purchase crop insurance or NAP, as required in paragraph (a) or (b) of this section, the producer shall reimburse CCC for the full amount of the assistance, plus interest, provided to the producer under this part.

§ 1479.107 Miscellaneous provisions.

(a) A person shall be ineligible to receive disaster assistance under this part if it is determined by the State or county committee or an official of FSA that such person has:

(1) Adopted any scheme or other device that tends to defeat the purpose of a program operated under this part;

(2) Made any fraudulent representation with respect to such program; or

(3) Misrepresented any fact affecting a program determination.

(b) All persons with a financial interest in the operation receiving benefits under this part shall be jointly and severally liable for any refund, including related charges, which is determined to be due CCC for any reason under this part.

(c) In the event that any request for assistance or payment under this part was established as a result of erroneous information or a miscalculation, the assistance or payment shall be recalculated and any excess refunded to CCC with applicable interest.

(d) The liability of any person for any penalty or sanction under or in connection with this part, or for any refund to CCC or related charge arising in connection therewith, shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001 and 1014; 15 U.S.C. 714m; and 31 U.S.C. 3729.

(e) Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the regulations set forth in parts 11 and 780 of this title.

(f) Any payment or portion thereof to any person shall be made without regard to questions of title under State

law and without regard to any claim or lien against the crop, or proceeds thereof.

(g) For the purposes of 28 U.S.C. 3201(e), CCC waives the restriction on receipt of funds or benefits under this program but only as to beneficiaries who as a condition of such waiver agree to apply the benefits received under this part to reduce the amount of the judgment lien.

§ 1479.108 Additional general provisions.

(a) For calculations of loss made with respect to insured crops, the producer's existing unit structure will be used as the basis for the calculation and may include optional units established in accordance with part 457 of this title. Insured crops may have basic units established if the existing unit structure is based on enterprise units or whole county units or written agreements. For uninsured and non-insurable crops, basic units will be established for these purposes.

(b) County average yield for loss calculations will be the average of the 1998 through 2002 official county yields established by CCC, excluding the years with the highest and lowest yields, respectively.

(c) County committees will assign production or reduce the historic yield when the county committee determines:

(1) An acceptable appraisal or record of harvested production does not exist;

(2) The loss is due to an ineligible cause of loss or practices, soil type, climate, or other environmental factors, that cause lower yields than those upon which the historic yield is based;

(3) The producer has a contract providing a guaranteed payment for all or a portion of the crop; or

(4) The crop is planted beyond the normal planting period for the crop.

(d) The county committee shall establish a maximum loss level that should reflect the amount of production producers should have produced considering the eligible disaster conditions in the area or county for the same crop. The maximum loss level for the county shall be expressed as either a percent of loss or yield per acre. The maximum loss level will apply when:

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(1) Unharvested acreage has not been appraised by FSA, or a company reinsured by FCIC; or

(2) Acceptable production records for harvested acres are not available from any source.

(e) Assigned production or reduced yield for practices that result in lower yields than those for which the historic yield is based shall be established based on the acres found to have been subjected to those practices.

(f) Assigned production for crops planted beyond the normal planting period for the crop shall be calculated according to the lateness of planting the crop. With the exception of replanted crops, if the crop is planted after the final planting date by:

(1) Up to and including 10 calendar days, the assigned production reduction will be based on one percent of the payment yield for each day involved;

(2) Eleven (11) through 24 calendar days, the assigned production reduction will be based on 10 percent of the payment yield plus an additional two percent reduction of the payment yield for each day of days 11 through 24 that are involved; and

(3) Twenty-five (25) or more calendar days or a date from which the crop would not reasonably be expected to mature by harvest, the assigned production reduction will be based on 50 percent of the payment yield or such greater amount determined by the county committee to be appropriate.

(4) CCC may adjust items 1 through 3 to make a comparable assignment for short rotation crops such as vegetables that may have a 30-day growing period.

(g) Assigned production for producers with contracts to receive a guaranteed payment for production of an eligible crop will be established by the county committee by:

(1) Determining the total amount of guaranteed payment for the unit;

(2) Converting the guaranteed payment to guaranteed production by dividing the total amount of guaranteed payment by the approved county price for the crop or variety or such other factor deemed appropriate if otherwise the production would appear to be too high; and

(3) Establishing the production for the unit as the greater of the actual

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net production for the unit or the guaranteed payment, or combination thereof if greater.

§ 1479.109 Eligible disaster conditions.

(a) Except as provided in paragraphs (b) and (c) of this section, this part applies to losses where the crop could not be planted or crop production, both in quantity and quality, was adversely affected by disasters as defined in § 1479.102, or:

(1) Insect infestation as a related condition to damaging weather if documented by COC with published data;

(2) Disease as a related condition to damaging weather;

(3) Salt water intrusion of an irrigation supply;

(4) Irrigation water rationing if proof is provided that water was rationed by a Government entity or water district (unless the producer was compensated by the Government entity or water district for a disaster or conservation purpose);

(5) Lack of water supply due to drought conditions for irrigated crops;

(6) Other weather-related factors as determined by the Deputy Administrator.

(b) Qualifying crop losses for the 2005 crop are limited to only those losses caused by a hurricane or tropical storm of the 2004 hurricane season in counties declared disaster areas by the President.

(c) Disaster benefits will not be available under this part if the crop could not be planted or crop production, both in quantity and quality, was adversely affected by:

(1) Poor farming practices;

(2) Poor management decisions; or

(3) Drifting herbicides.

§ 1479.110 Qualifying 2003, 2004, or 2005-crop losses.

(a) To receive disaster benefits under this part, the county committee must determine that because of an eligible disaster condition, the producer with respect to the 2003, 2004, or 2005 crop year:

(1) Was prevented from planting a crop;

(2) Sustained a loss in excess of 35 percent of the expected production of a crop; or